

AGREEMENT OF LEASE

Between

THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION  
AMES RESEARCH CENTER

And

THE CITY OF SUNNYVALE, CALIFORNIA

This is an AGREEMENT OF LEASE ("AGREEMENT"), for reference dated \_\_\_\_\_ ("Effective Date"), between the National Aeronautics and Space Administration ("NASA") Ames Research Center ("ARC") located at Moffett Field, California 94035, an Agency of the United States Government ("GOVERNMENT") and the City of Sunnyvale ("LESSEE"), P.O.Box 3707, Sunnyvale, California 94088 for the use of certain lands owned and controlled by ARC at Moffett Field, California.

In accordance with the Memorandum of Understanding between the Department of the Navy and the National Aeronautics and Space Administration Regarding Moffett Field, California (MOU), signed and effective December 22, 1992, lands formerly part of Naval Air Station (NAS) Moffett Field will be retained by NASA as a Federal Facility for joint use by NASA, the Department of Defense (DOD), and other Federal entities.

Prior to the transfer of custodial responsibility for the former NAS Moffett Field from the Department of the Navy to NASA pursuant to the MOU, Lessee leased the Premises (hereinafter described) from the Department of the Navy since 1966 and has developed the Premises as part of Lessee's Municipal Golf Course.

The Premises are needed by NASA to ensure the safe approach and take-off of aircraft from Moffett Federal Airfield at ARC. The purpose of this AGREEMENT is to ensure the proper control and maintenance of the Premises to ensure safe airfield operations.

This AGREEMENT is made under the authority of section 203(c) of the National Aeronautics and Space Act of 1958 as amended, 42 USC 2473 (c)(3), (5) and (6). NASA has deemed it to be in the public interest to lease to LESSEE the Premises hereinafter described on the terms and conditions hereinafter set forth.

ARTICLE 1. LEASED PREMISES

NASA hereby leases, rents and demises to LESSEE, and LESSEE hereby hires and rents from NASA the following described property ("Premises"):

*All that certain portion of Moffett Field, containing 35.4 acres, more or less, marked as **Exhibit "A"** attached hereto and made a part hereof.*

subject to and reserving therefrom the right of the GOVERNMENT to install, operate, maintain, repair and replace on, over, and under the land, signs, warning lights, approach lights, and other types of safety devices which it considers necessary for the safety and protection of aircraft operations, and to maintain, remove, or require the removal of trees, landscaping, or golf course

amenities as necessary for the safe operation of aircraft, including the right of ingress and egress over and across said Premises for the purpose of exercising all the said rights above.

#### ARTICLE 2. TERM

The term of this AGREEMENT shall be for a period of twenty (20) years beginning "Effective Date" \_\_\_\_\_ and expiring at 12:00 AM on \_\_\_\_\_, 2021.

#### ARTICLE 3. CONSIDERATION

(a) LESSEE shall pay NASA an annual cash payment as rental and cost reimbursement for use of the Premises. The annual cash payment shall be in the amount of \$45,500 based on fair market value of \$650,000 and 7% rate of return. The annual cash payment will be adjusted by 3% inflation each year for the first five years of the term and will remain fixed from year 6 through 10. Future adjustments to the annual cash payment will be based on All Urban Consumer Price Index (CPI) for San Francisco Bay Area cumulative adjustments in November of year 2011 and 2016, *Exhibit "B"*.

(b) The annual cash payment will be due at the beginning of each AGREEMENT year. Payments will be made payable to the National Aeronautics and Space Administration and mailed to Financial Management Division, Mail Stop 203-17, Moffett Field, CA 94035-1000.

#### ARTICLE 4. USE

The LESSEE shall use the premises solely for the maintenance and operation of a public golf course; provided however,

(a) The LESSEE shall not erect, construct, or plant, or maintain structures or obstructions of any kind on said Premises, including, but not limited to, trees, buildings, poles, embankments, ditches, gullies and water courses; excepting the maintenance and improvement of the existing landscaping and golf course amenities. Without exception, the LESSEE shall not allow any object, either natural or artificial, to exceed a height that NASA determines is unsafe for operations at Moffett Federal Airfield.

(b) The LESSEE shall not install floodlights or any high intensity lighting on the Premises;

(c) The LESSEE shall not interfere with or obstruct in any way the proper operation and purpose of any signs, warning lights, approach lights, or other type of safety devices or items related to operations of Moffett Federal Airfield.

(d) The GOVERNMENT reserves the right to remove or alter, in whole or in part, any structure or obstruction, artificial or natural, which is found to exist in violation of the terms and conditions of this AGREEMENT. The cost of such removal will be borne by the LESSEE, or assigns, when such violation has resulted from actions of LESSEE and assigns. Prior to exercising such right, the GOVERNMENT shall, except in cases of emergency or other immediate impact on the safety of Moffett Federal Airfield operations, give LESSEE thirty (30) days prior written notice to correct or remove the violation. The GOVERNMENT reserves the right of ingress and egress over and across said Premises for the purpose of exercising the rights set forth herein.

#### ARTICLE 5. GENERAL MAINTAINANCE

(a) The LESSEE, at its own expense, shall use, and maintain the Premises and all improvements installed thereon in accordance with the principles of sound property management.

(b) NASA shall have the right to, and shall, trim trees below a height it determines is necessary in order to facilitate safe operation of Moffett Federal Airfield.

#### ARTICLE 6. UTILITIES AND SERVICE

NASA shall supply no utilities or services to the LESSEE hereunder, but the LESSEE shall make its own arrangements for procurement thereof.

#### ARTICLE 7. IMPROVEMENTS, AND REMOVALS

(a) The LESSEE shall have the right, at its own expense, to maintain improvements of the Premises as shall be necessary or incidental to the use permitted under ARTICLE 4, above, and consistent with the limitations of such use; provided, however, that no development, construction, or installation shall be accomplished hereunder except in strict accordance with plans and specifications therefor which have received prior written approval from NASA.

(b) All improvements pursuant to paragraph (a) above shall remain the property of the LESSEE during the entire term of this AGREEMENT, and the LESSEE may remove any item thereof at any time prior to the expiration of this AGREEMENT; Provided, however, the LESSEE shall in connection with any such removal, at its own expense, restore the portion of the Premises affected to a condition satisfactory to NASA. Upon prior termination of this AGREEMENT by NASA, the LESSEE shall by written notice to NASA within 60 days of written notice of such termination, advise NASA of any item which it shall elect to remove, in which event such removal and attendant restoration may be accomplished within such reasonable period of time as NASA shall prescribe.

(c) NASA reserves the right, by written notice delivered to the LESSEE within thirty (30) days from the expiration or prior termination of this AGREEMENT, to require the LESSEE, at its own expense and within such reasonable period of time as NASA shall prescribe, to remove any improvement made on the premises pursuant to paragraph (a) above, which the LESSEE shall not have elected to remove pursuant to paragraph (b), above, and to restore the portion of the Premises affected by such removal to a condition satisfactory to NASA.

(d) All property of the LESSEE on the Premises not removed in accordance with the rights and requirements of paragraphs (b) and (c), above, shall be deemed abandoned by the LESSEE and may be used or disposed of by NASA in any manner whatsoever without liability to account to the LESSEE therefor, but such abandonment shall in no way reduce any obligation of the LESSEE hereunder to restore the Premises.

#### ARTICLE 8. REPRESENTATION

LESSEE has examined, knows and accepts the conditions and state of the Premises, and Moffett Field of which it forms a part, together with the use made of Moffett Field by the GOVERNMENT, and acknowledges that the GOVERNMENT, the ARC, or NASA has made no representation concerning such conditions, state of repair and use, nor any agreement or promise to alter, improve, adapt, repair or keep in repair the same, or any portion thereof, which has not been fully set forth in this AGREEMENT which contains all the agreements made and entered into between LESSEE and NASA.

ARTICLE 9. RISK OF LOSS AND NON-LIABILITY OF THE GOVERNMENT

(a) The LESSEE covenants that it will save and hold harmless NASA, ARC, the GOVERNMENT, and its officers, agents and employees, for and from any and all liability or claims for loss or damage to any property owned by or in the custody of the LESSEE, its officers, agents, servants, employees, subtenants, licensees or invitees, or for the injury to or death of any of the same, or any person, as a result of LESSEE's occupancy and use of the Premises under this AGREEMENT, except for any willful act of damage by the GOVERNMENT, its officers, agents, or employees.

(b) The LESSEE shall be responsible for all costs incurred by the GOVERNMENT for any damage (beyond normal wear and tear reasonably to be expected) to Government property and equipment located on the Premises, including, but not limited to, signs, warning lights, approach lights, and other types of safety devices, when such damage results from LESSEE'S occupancy and use of the Premises under this AGREEMENT.

ARTICLE 10. INSURANCE

(a) LESSEE shall procure and maintain at its own expense public liability insurance covering the risks of loss and liability assumed by ARTICLE 9, above, in the following minimum amounts: Bodily Injury or Death, \$3,000,000 per person, \$3,000,000 per accident; Property Damage, \$3,000,000. Annually NASA shall have the right to set new limits of liability for the required insurance coverage. It is expressly agreed, however, that maintenance of the required insurance shall effect no limitation of the LESSEE's liability under ARTICLE 9, above.

(b) Each policy of insurance required to be maintained by the LESSEE under paragraph (a) above, shall name both the LESSEE and the United States of America (National Aeronautics and Space Administration) as the insured, shall contain a provision for thirty (30) days written notice to NASA prior to the making of any material change in or cancellation of the policy, and shall otherwise be in such form for such periods of time and with such insurers as NASA shall from time to time require and approve.

(c) The LESSEE shall promptly deliver to NASA a certificate of insurance or a certified copy of each policy of insurance required by this AGREEMENT and shall also deliver, no later than thirty (30) days prior to expiration of any such policy a certificate of insurance or certified copy of each renewal policy covering the same risks.

(d) NASA agrees to allow LESSEE's self-insurance to be used to cover the above requirements of this Article 10, subject to LESSEE providing, at the request of NASA, evidence satisfactory to NASA that such self-insurance is adequate to cover the above requirements of this Article 10.

ARTICLE 11.

SUBJECTION TO EXISTING AND FUTURE EASEMENTS AND RIGHTS OF WAY

(a) This AGREEMENT is subject to all easements and rights of way whether or not of record, including, but not limited to, a right of way reserved to the City and County of San Francisco, California, by Civil Action No.31783, the United States of America vs. 153.133 acres of land, more or less in Santa Clara County, California, Edmond F. Brovelli, et al, final judgment entered 15 November 1956, for the use, operation, repair and maintenance of a water pipeline now located in, on, over and across said Premises.

(b) In addition, NASA owns a water main that connects to the San Francisco water line, crosses the Premises, and then passes under Highway 101 to deliver water to the eastern portion

of Moffett Federal Airfield. NASA reserves the right of ingress and egress to operate, maintain, and repair this water main.

(c) Further, this AGREEMENT is subject to the right of the GOVERNMENT to grant such additional easements and right of way over, across, in and upon the Premises, as it shall determine to be in the public interest; provided, that any such additional easement or right of way shall be conditioned on the assumption by the Grantee thereof of liability to LESSEE for such damages as the LESSEE shall suffer for property destroyed or property rendered unusable on account of Grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such easements and rights of way as are presently outstanding or which may hereafter be granted, to any workers, officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities. The holder of any such easements, whether existing or newly granted, shall give prior written notice, within a reasonable time, to LESSEE of the scope and nature of any work they propose to perform, and shall coordinate a work schedule with LESSEE.

#### ARTICLE 12. TERMINATION BY THE GOVERNMENT

(a) This AGREEMENT may be terminated by the mutual agreement of the Parties.

(b) This AGREEMENT may also be terminated, in whole or in part, and without cost to the GOVERNMENT, if there has been: (a) a declaration of war by the Congress of the United States; (b) a declaration of a national emergency by the President of the United States; (c) a failure of LESSEE to comply with any term or condition of this Lease; or (d) a determination by the Director, NASA Ames Research Center, the Associate Administrator of Management Systems (NASA Headquarters), or the Director of the Facilities Engineering Division (NASA Headquarters) that the interests of the national space program, national defense or public welfare require termination of the interest granted, and a prior thirty (30) day notice, in writing, to LESSEE that such determination has been made.

(c) In the event early termination of this AGREEMENT by the GOVERNMENT under ARTICLE 12, Paragraph (b) above, the GOVERNMENT shall make a pro rata adjustment of any advance rent paid by LESSEE.

#### ARTICLE 13. SURRENDER OF PREMISES

Subject to its rights and obligations under ARTICLE 7, above, relative to removal of structures erected and installations made by it on the Premises, upon the expiration of this AGREEMENT or its prior termination, the LESSEE shall quietly and peacefully remove itself from the Premises and surrender the possession thereof to the GOVERNMENT. The GOVERNMENT's officers and agents may enter the Premises and cause the removal of all persons and property therefrom without recourse to any action or proceeding at law or in equity. The LESSEE hereby expressly waives any provision of law requiring notice to quit possession of the Premises. Such removal shall be at the sole cost and expense of the LESSEE. The LESSEE shall indemnify and hold harmless the GOVERNMENT, ARC, NASA, their officers, agents, and employees from any and all liability or claims for damages of any nature whatsoever which may arise out of or be attributable to such removal.

#### ARTICLE 14. LIENS

LESSEE shall promptly discharge or cause to be discharged any valid lien, right in rem, claim or demand of any kind, except one in favor of NASA, the ARC, or the GOVERNMENT, which at any time may arise or exist with respect to the Premises or materials or equipment furnished therefor, or any part thereof, and if the same shall not be promptly discharged by the LESSEE, NASA may discharge, or cause to be discharged, the same at expense of the LESSEE.

#### ARTICLE 15. ACCESS

NASA, the ARC and the GOVERNMENT shall have access to the Premises at all reasonable times for any purposes not inconsistent with the quiet use and enjoyment thereof by LESSEE, including, but not limited to, the purpose of inspection.

#### ARTICLE 16. TAXES

(a) The LESSEE shall pay to the proper authority, when due and payable, all taxes, assessments, and similar charges which, at any time during the term of this AGREEMENT may be imposed upon the LESSEE with respect to LESSEE's use and occupancy of the Premises.

(b) LESSEE shall have the right at any time before delinquency occurs to contest or object to the amount or validity of any such tax, assessment, or similar charge by appropriate legal proceedings. This right shall not be deemed or construed in any way as relieving, modifying or extending LESSEE's agreement to pay any such tax, assessment, or similar charge unless LESSEE shall have obtained a stay of such proceedings. It shall be LESSEE's sole responsibility hereunder to apply for and prosecute any exemption from taxation to which LESSEE may be entitled, and NASA or ARC shall be at no expense therefor. NASA or ARC shall not be required to join or assist LESSEE in any such proceedings.

#### ARTICLE 17. DISPUTES

(a) Except as otherwise provided in this AGREEMENT, any dispute concerning a question of fact arising under this AGREEMENT which is not disposed of by this AGREEMENT shall be decided by the Director, Ames Research Center, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to LESSEE. The decision of the Director, Ames Research Center shall be final and conclusive unless within thirty (30) days from the receipt of such copy, the LESSEE mails or otherwise furnishes a written appeal to the Administrator, National Aeronautics and Space Administration who has delegated authority to the Director, Facilities Engineering Division. The decision of the Director, Facilities Engineering Division shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this AGREEMENT as limiting judicial review of any such decision where fraud by such official or his representative or board is alleged; provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the LESSEE shall proceed diligently with the performance of this AGREEMENT and in accordance with the decision of the Director, Ames Research Center.

(b) This DISPUTES clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a), above. Nothing in this AGREEMENT, however, shall be construed as making final the decision of any administrative official, representative, or board in a question of law.